

AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 674

Introduced by Assembly Member Salas

February 25, 2009

An act to add Chapter 2.97 (commencing with Section 1001.91) to Title 6 of Part 2 of the Penal Code, relating to criminal procedure. An act to amend Section 1170.9 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 674, as amended, Salas. Criminal procedure: veterans.

~~Existing law establishes various diversion and deferred entry of judgment programs for, among other things, substance abuse treatment. Existing provisions of the California Constitution require a $\frac{2}{3}$ vote of the membership of each house of the Legislature for a bill that would exclude relevant evidence in a criminal proceeding.~~

~~This bill would establish a deferred entry of judgment program and a preconviction drug diversion program for veterans, as specified, who suffer from post-traumatic stress disorder or traumatic brain injury, as specified, and who commit specified offenses. Because this program would provide for the exclusion of certain urine analysis results and statements of program participants from criminal proceedings, the bill would require a $\frac{2}{3}$ vote.~~

Existing law provides that if a person is convicted of a criminal offense and alleges that he or she committed the offenses as a result of post-traumatic stress disorder, substance abuse, or psychological problems stemming from service in combat in the United States military, the court shall hold a hearing prior to sentencing to make a

determination about the allegation. If the court finds that the defendant's crime was committed as a result of one of those factors related to serving in combat, and the court places the person on probation, existing law authorizes the court to place the person into a treatment program, as specified.

This bill would instead, if the defendant alleges that her or she committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from military service in the United States military, require the court to make a determination as to whether a defendant was, or currently is, a member of the United States military, and would authorize the court to request through the use of existing resources an assessment of whether the defendant may be suffering from those disorders. The bill would eliminate the requirement that the offense be committed as a result of problems stemming from service in a combat theater.

The bill would eliminate the requirement that an order be made referring the defendant to a county mental health agency only if the agency agreed to accept responsibility for treatment of the defendant. The bill would also eliminate a provision granting sentence credits for defendants granted probation and committed to a residential treatment program.

The bill would require the court and the assigned treatment program to collaborate with the Department of Veterans Affairs and the United States Veterans Administration to maximize benefits and services.

By imposing additional burdens on local government entities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1170.9 of the Penal Code is amended to*
2 *read:*

3 1170.9. (a) In the case of any person convicted of a criminal
4 offense who ~~would~~ *could* otherwise be sentenced to county jail or
5 state prison and who alleges that he or she committed the offense
6 as a result of *sexual trauma, traumatic brain injury*, post-traumatic
7 stress disorder, substance abuse, or ~~psychological mental health~~
8 problems stemming from service ~~in a combat theater~~ in the United
9 States military, the court shall, prior to sentencing, ~~hold a hearing~~
10 ~~to determine whether the defendant was a member of the military~~
11 ~~forces of the United States who served in combat and shall assess~~
12 ~~whether the defendant suffers from~~ *make a determination as to*
13 ~~whether the defendant was, or currently is, a member of the United~~
14 ~~States military and may request through the use of existing~~
15 ~~resources an assessment of whether the defendant may be suffering~~
16 ~~from sexual trauma, traumatic brain injury, post-traumatic stress~~
17 ~~disorder, substance abuse, or psychological mental health problems~~
18 as a result of that service.

19 (b) If the court concludes that a defendant convicted of a
20 criminal offense is a person described in subdivision (a), and if
21 the defendant is otherwise eligible for probation and the court
22 places the defendant on probation, the court may order the
23 defendant into a local, state, federal, ~~or~~ private nonprofit treatment
24 program, *or a veteran's court* for a period not to exceed that which
25 the defendant would have served in state prison or county jail,
26 provided the defendant agrees to participate in the program and
27 the court determines that an appropriate treatment program exists.

28 (c) If a referral is made to the county mental health authority,
29 the county shall be obligated to provide mental health treatment
30 services only to the extent that resources are available for that
31 purpose, as described in paragraph (5) of subdivision (b) of Section
32 5600.3 of the Welfare and Institutions Code. If mental health
33 treatment services are ordered by the court, the county mental
34 health agency shall coordinate appropriate referral of the defendant
35 to the county veterans service officer, as described in paragraph
36 (5) of subdivision (b) of Section 5600.3 of the Welfare and
37 Institutions Code. The county mental health agency shall not be
38 responsible for providing services outside its traditional scope of

1 services. ~~An order shall be made referring a defendant to a county~~
2 ~~mental health agency only if that agency has agreed to accept~~
3 ~~responsibility for the treatment of the defendant.~~

4 (d) When determining the “needs of the defendant,” for
5 purposes of Section 1202.7, the court shall consider the fact that
6 the defendant is a person described in subdivision (a) in assessing
7 whether the defendant should be placed on probation and ~~whether~~
8 ~~the defendant would be best served while on probation by being~~
9 ~~ordered into a private nonprofit federal- or community-based~~
10 ~~treatment service program with a demonstrated history of~~
11 ~~specializing in the treatment of military service-related issues, such~~
12 ~~as post-traumatic stress disorder, substance abuse, or psychological~~
13 ~~problems~~ *mental health problems, including substance abuse,*
14 *post-traumatic stress disorder, traumatic brain injury, military*
15 *sexual trauma, and other related mental health problems.*

16 (e) ~~A defendant granted probation under this section and~~
17 ~~committed to a residential treatment program shall earn sentence~~
18 ~~credits for the actual time the defendant served in residential~~
19 ~~treatment.~~

20 (f)

21 (e) The court, in making an order under this section to commit
22 a defendant to an established treatment program, shall give
23 preference to a treatment program that has a history of successfully
24 treating ~~combat~~ veterans who suffer from *sexual trauma, traumatic*
25 *brain injury, post-traumatic stress disorder, substance abuse, or*
26 ~~psychological~~ *mental health problems as a result of that service,*
27 *including, but not limited to, programs operated by the United*
28 *States Department of Defense or the United States Veterans*
29 *Administration.*

30 (f) *The court and the assigned treatment program shall*
31 *collaborate with the Department of Veterans Affairs and the United*
32 *States Veterans Administration to maximize benefits and services*
33 *provided to the veteran.*

34 SEC. 2. *If the Commission on State Mandates determines that*
35 *this act contains costs mandated by the state, reimbursement to*
36 *local agencies and school districts for those costs shall be made*
37 *pursuant to Part 7 (commencing with Section 17500) of Division*
38 *4 of Title 2 of the Government Code.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Assembly, February 25, 2009. (JR11)**

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